

RECORDATION NO. 25813 FILED

ALVORD AND ALVORD  
ATTORNEYS AT LAW  
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SUITE 301  
WASHINGTON, D.C.

AUG 31 '05

2-17 PM

SURFACE TRANSPORTATION BOARD

ELIAS C. ALVORD (1942)  
ELLSWORTH C. ALVORD (1964)

20036

OF COUNSEL  
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August 30, 2005

Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a) are two (2) copies of a Memorandum of Mortgage, dated as of August 31, 2005, a primary document as defined in the Board's Rules for the Recordation of Documents.

The names and addresses of the parties to the enclosed document are:

Debtor: Babcock & Brown Rail Funding LLC  
885 Second Avenue, 49<sup>th</sup> Floor  
New York, New York 10017

[Secured Party: Bayerische Hypo-Und Vereinsbank AG, Agent  
FPA 4 Lease/Asset Finance  
Am Tucherpark 1 (FPA)  
80538 Munich  
Germany]

Mr. Vernon A. Williams  
August 30, 2005  
Page 2

A description of the railroad equipment covered by the enclosed document is:

1. 300 Maxi-Stack five (5) Unit articulated double stack container railcars: BNSF 238300 - BNSF 238599,
2. 40 riserless deck centerbeam flatcars: AOK 27900 - AOK 27939, and
3. 25 riserless deck centerbeam flatcars: AOK 26965- AOK 26989.

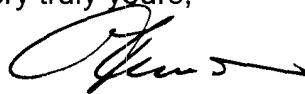
A short summary of the document to appear in the index is:

Memorandum of Mortgage.

Also enclosed is a check in the amount of \$33.00 payable to the order of the Surface Transportation Board covering the required recordation fee.

Kindly return stamped copies of the enclosed document to the undersigned.

Very truly yours,



Robert W. Alvord

RWA/anm  
Enclosures

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EXECUTION COPY

SURFACE TRANSPORTATION BOARD

**MEMORANDUM OF MORTGAGE**

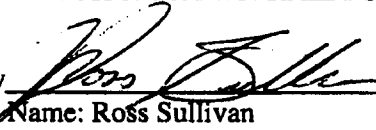
Memorandum of Mortgage, made and entered into as of August 31, 2005 between BABCOCK & BROWN RAIL FUNDING LLC (the "Debtor") and BAYERISCHE HYPO-UND VEREINSBANK AG, as Agent under the Security Agreement referred to below (together with its successors and permitted assigns, the "Secured Party"). Terms used in this instrument have the meanings assigned thereto in the Amended and Restated Security Agreement dated as of October 18, 2002 (as supplemented, including by Security Agreement Supplement No. 22 dated the date hereof, the "Security Agreement") between the Secured Party and the Debtor.

**WITNESSETH:**

The undersigned and the Secured Party have entered into the Security Agreement, by which the Debtor has granted a security interest in certain railroad equipment bearing reporting marks and road numbers as listed on Exhibit A attached hereto and in each lease referred to on Exhibit B attached hereto to the Secured Party in order to secure the Debtor's performance of its obligations as described in the Security Agreement.

IN WITNESS WHEREOF, the party hereto has caused this memorandum to be duly executed by its officer duly authorized as of the date and year first above written.

**BABCOCK & BROWN RAIL FUNDING LLC**

By   
Name: Ross Sullivan  
Title: Vice President

STATE OF CALIFORNIA

)

) ss.:

COUNTY OF SAN FRANCISCO

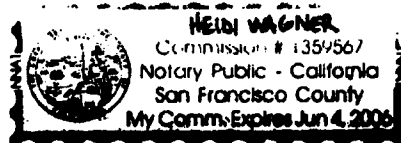
)

On the 29<sup>TH</sup> day of August in the year 2005 before me personally came Ross Sullivan to me known, who, being by me duly sworn, did depose and say that he reside(s) at 1090 Butterfield Road, San Anselmo, CA 94960; that he is the Vice President (duly appointed) of Babcock & Brown Rail Funding LLC, the limited liability company described in and which executed the above instrument; and that he signed his name thereto by authority of the officers of said limited liability company.

Heidi Wagner

Notary Public

[Notarial Seal]



Memorandum of Mortgage

NEWYORK/#152637.1

**Exhibit A**  
**to Memorandum of Mortgage**

**EQUIPMENT**

<b>Lease #</b>	<b># Cars</b>	<b>Year Built</b>	<b>Description</b>	<b>Reporting Marks</b>	<b>Casualty Marks</b>
1	300	2005	MAXI-STACK FIVE (5) Unit Articulated Double Stack Container Cars, 801, 200 lbs. GRL, AAR Type S162	BNSF 238300- 238599, inclusive	None
2	40	2005	73' riserless deck Centerbeam Flatcars, 286,000 lbs. GRL, AAR Type F483	AOK 27900-27939, inclusive	None
3	25	2005	73' riserless deck Centerbeam Flatcars, 286,000 lbs. GRL, AAR Type F483	AOK 26965-26989, inclusive	None

**Exhibit B**  
**to Memorandum of Mortgage**

**LIST OF LEASES AND OTHER OPERATIVE AGREEMENTS**

**Lease No. 1 – BNSF Railway Company**

Letter Agreement dated August 8, 2005, by and between Gunderson, Inc. and Babcock & Brown Rail Funding LLC, to the extent the same relates to the Equipment described under the caption "Lease #1" in Exhibit A hereto.

Master Full Service Railcar Lease dated as of August 8, 2005, by and between Babcock & Brown Rail Funding LLC and BNSF Railway Company, to the extent the same relates to the Equipment described under the caption "Lease #1" in Exhibit A hereto.

Schedule No. 01 to Master Full Service Railcar Lease dated as of August 10, 2005, by and between Babcock & Brown Rail Funding LLC and BNSF Railway Company.

Memorandum of Railcar Lease dated as of August 8, 2005, by and between Babcock & Brown Rail Funding LLC and BNSF Railway Company.

Certificates of Acceptance for Lease of Railroad Cars dated August, 11, 2005, August 12, 2005, August 15, 2005, August 16, 2005, August 17, 2005, August 18, 2005 and August 19, 2005 from BNSF Railway Company to Babcock & Brown Rail Funding LLC in relation to the railcars identified in each such Certificates of Acceptance for Lease of Railroad Cars.

Railcar Service Agreement [BNSF] dated as of August 8, 2005 between Greenbrier Management Services, LLC and Babcock & Brown Rail Funding LLC, in respect of the Equipment described under the caption "Lease #1" in Exhibit A hereto.

Each Certificate of Acceptance for Lease of Railroad Cars, from BNSF Railway Company to Babcock & Brown Rail Funding LLC in relation to the railcars identified in each such Certificate of Acceptance for Lease of Railroad Cars, to the extent the same relates to the Equipment described under the caption "Lease #1" in Exhibit A hereto.

Warranty Bill of Sale dated as of August 31, 2005, from Gunderson, Inc. to Babcock & Brown Rail Funding LLC and Certificates of Acceptance executed by Babcock & Brown Rail Funding LLC in relation to the railcars identified in the Warranty Bill of Sale.

Each Warranty Bill of Sale from Gunderson, Inc. to Babcock & Brown Rail Funding LLC, and each Certificate of Acceptance executed by Babcock & Brown Rail Funding LLC in relation to the railcars identified in each such Warranty Bill of Sale, to the extent the same relates to the Equipment described under the caption "Lease #1" in Exhibit A hereto.

Lease No. 2 – Anthony Forest Products Company

Lease Agreement entered into as of May 1, 2005, by and between Greenbrier Leasing Corporation and Anthony Forest Products Company, to the extent the same relates to the Equipment described under the caption "Lease #2" in Exhibit A hereto.

Rider No. 1 to Lease Agreement entered into as of May 1, 2005, by and between Greenbrier Leasing Corporation and Anthony Forest Products Company.

Memorandum of Lease Agreement and Rider No. 1 made and entered into as of May 1, 2005, by and between Greenbrier Leasing Corporation and Anthony Forest Products Company.

Bills of Sale dated August 2, 2005, from American Railcar Industries, Inc. to Greenbrier Leasing Corporation, and each Certificate of Acceptance executed by Greenbrier Leasing Corporation in relation to the railcars identified in each such Bill of Sale.

Certificate of Acceptance dated August 25, 2005, executed by Anthony Forest Products Company, in respect of the Equipment described under the caption "Lease #2" in Exhibit A hereto.

Railcar Service Agreement [Anthony] dated as of August 31, 2005 between Greenbrier Management Services, LLC and Babcock & Brown Rail Funding LLC, in respect of the Equipment described under the caption "Lease #2" in Exhibit A hereto.

Purchase Agreement [GLC] dated as of August 31, 2005, between Greenbrier Leasing Corporation and Babcock & Brown Rail Funding LLC, to the extent the same relates to the Equipment described under the caption "Lease #2" in Exhibit A hereto.

Bill of Sale dated August 31, 2005 from Greenbrier Leasing Corporation to Babcock & Brown Rail Funding LLC, in respect of the Equipment described under the caption "Lease #2" in Exhibit A hereto.

Assignment and Assumption Agreement dated as of August 31, 2005, between Greenbrier Leasing Corporation and Babcock & Brown Rail Funding LLC, in respect of the Equipment described under the caption "Lease #2" in Exhibit A hereto.

Notice and Acknowledgment dated August 25, 2005, made by Greenbrier Leasing Corporation and Babcock & Brown Rail Funding LLC to Anthony Forest Products Company in respect of the Equipment described under the caption "Lease #2" in Exhibit A hereto.

Notice Pursuant to Notice and Acknowledgment dated August 31, 2005, made by Babcock & Brown Rail Funding LLC and Greenbrier Leasing Corporation to Anthony Forest Products Company, in respect of the Equipment described under the caption "Lease #2" in Exhibit A hereto.

Warranty Assignment dated as of August 31, 2005, between Greenbrier Leasing Corporation, as assignor thereunder, and Babcock & Brown Rail Funding LLC, as assignee thereunder, in respect of the Equipment described under the caption "Lease #2" in Exhibit A hereto.

Manufacturer's Consent dated August 31, 2005, made by American Railcar Industries, Inc. to Babcock & Brown Rail Funding LLC, in respect of the Equipment described under the caption "Lease #2" in Exhibit A hereto.

Lease No. 3 – Potlatch Corporation

Lease Agreement entered into as of September 15, 2003, by and between Greenbrier Leasing Corporation and Potlatch Corporation, to the extent the same relates to the Equipment described under the caption "Lease #3" in Exhibit A hereto.

Rider No. 2 to Lease Agreement entered into as of May 5, 2005, by and between Greenbrier Leasing Corporation and Potlatch Corporation as it relates to the Equipment.

Memorandum of Lease Agreement and Rider No. 2 made and entered into as of May 5, 2005, by and between Greenbrier Leasing Corporation and Potlatch Corporation.

Bills of Sale dated August 2, 2005, from American Railcar Industries, Inc. to Greenbrier Leasing Corporation, and each Certificate of Acceptance executed by Greenbrier Leasing Corporation in relation to the railcars identified in each such Bill of Sale.

Certificate of Acceptance dated August 26, 2005, executed by Potlatch Corporation, in respect of the Equipment described under the caption "Lease #3" in Exhibit A hereto.

Railcar Service Agreement [Potlatch] dated as of August 31, 2005 between Greenbrier Management Services, LLC and Babcock & Brown Rail Funding LLC, in respect of the Equipment described under the caption "Lease #3" in Exhibit A hereto.

Purchase Agreement [GLC] dated as of August 31, 2005, between Greenbrier Leasing Corporation and Babcock & Brown Rail Funding LLC, to the extent the same relates to the Equipment described under the caption "Lease #3" in Exhibit A hereto.

Bill of Sale dated August 31, 2005 from Greenbrier Leasing Corporation to Babcock & Brown Rail Funding LLC, in respect of the Equipment described under the caption "Lease #3" in Exhibit A hereto.

Assignment and Assumption Agreement dated as of August 31, 2005, between Greenbrier Leasing Corporation and Babcock & Brown Rail Funding LLC, in respect of the Equipment described under the caption "Lease #3" in Exhibit A hereto.

Notice and Acknowledgment dated August 17, 2005, made by Greenbrier Leasing Corporation and Babcock & Brown Rail Funding LLC to Potlatch Corporation in respect of the Equipment described under the caption "Lease #3" in Exhibit A hereto.



Notice Pursuant to Notice and Acknowledgment dated August 31, 2005, made by Babcock & Brown Rail Funding LLC and Greenbrier Leasing Corporation to Potlatch Corporation, in respect of the Equipment described under the caption "Lease #3" in Exhibit A hereto.

Warranty Assignment dated as of August 31, 2005, between Greenbrier Leasing Corporation, as assignor thereunder, and Babcock & Brown Rail Funding LLC, as assignee thereunder, in respect of the Equipment described under the caption "Lease #3" in Exhibit A hereto.

Manufacturer's Consent dated August 31, 2005, made by American Railcar Industries, Inc. to Babcock & Brown Rail Funding LLC, in respect of the Equipment described under the caption "Lease #3" in Exhibit A hereto.

Together with all substitutions, replacements and renewals of the property above described, and all property which shall hereafter become physically attached to or incorporated in the property above described, whether the Company now has rights therein or such rights shall hereafter be acquired by it.

**CERTIFICATION**

I, Robert W. Alvord, attorney licensed to practice in the State of New York and the District of Columbia, do hereby certify under penalty of perjury that I have compared the attached copy with the original thereof and have found the copy to be complete and identical in all respects to the original document.

Dated: \_\_\_\_\_

8/31/05



\_\_\_\_\_  
Robert W. Alvord